

ASSEMBLY BILL

No. 2310

Introduced by Assembly Member Ridley-Thomas

February 21, 2014

An act to add Section 3485 to the Civil Code, relating to unlawful detainer, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2310, as introduced, Ridley-Thomas. Unlawful detainer: nuisance: unlawful weapons and ammunition.

(1) Existing law defines a nuisance and includes within this definition anything which is injurious to health, including the illegal sale of controlled substances. Existing law provides that a tenant who permits a nuisance to be maintained on leased property is guilty of unlawful detainer and may be evicted. Until January 1, 2014, the law authorized a city prosecutor or city attorney to file, in the name of the people, an action for unlawful detainer to abate the nuisance caused by illegal conduct involving unlawful weapons or ammunition on real property, as specified.

This bill would reenact provisions authorizing a city prosecutor or city attorney in specified counties to file an action for unlawful detainer to abate a nuisance caused by illegal conduct involving an unlawful weapons or ammunition described above. The bill would require the action to be based on an arrest report or other report, as specified. The bill would require, prior to filing an action specified notice be provided to the owner of the property, requiring the removal of the person is violating specified law, and would require notices to be served on both tenant and owner. The bill would require the owner to provide, within 30 calendar days of the mailing of the notice, all relevant information

pertaining to the unlawful detainer case, or provide a written explanation regarding safety-related reasons for noncompliance, and an assignment of the right to bring an unlawful detainer action against the tenant. The bill would require the assignment to be on a form provided by the city prosecutor or city attorney and authorize it to contain a provision for costs of investigation, discovery, and reasonable attorney's fees, not to exceed \$600. The bill would permit joinder of the owner if the owner fails to respond, as specified, would give the case priority over similar proceedings, and authorize an award of specified costs and fees.

Among other things, the bill would permit a court to order a partial eviction, as specified, and would define "unlawful weapons or ammunition purpose" for the purposes. The bill would impose reporting requirements regarding the implementation of these programs upon the city attorney and city prosecutor of the participating jurisdictions and would require the California Research Bureau to submit a report to the Senate and Assembly Committees on Judiciary, as specified, summarizing the information collected and evaluating the merits of the programs established. The bill would apply to the Counties of Los Angeles, San Diego, Sacramento, and Alameda. By imposing new duties on local officials, this bill would create a state-mandated local program.

(2) This bill would make legislative findings and declarations as to the necessity of a special statute for the counties of Los Angeles, San Diego, Sacramento, and Alameda.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3485 is added to the Civil Code, to read:
- 2 3485. (a) To abate the nuisance caused by illegal conduct
- 3 involving an unlawful weapons or ammunition on real property,

1 the city prosecutor or city attorney may file, in the name of the
2 people, an action for unlawful detainer against any person who is
3 in violation of the nuisance or illegal purpose provisions of
4 subdivision 4 of Section 1161 of the Code of Civil Procedure, with
5 respect to that unlawful weapons or ammunition purpose. In filing
6 this action, which shall be based upon an arrest report or other
7 report by a law enforcement agency, reporting an offense
8 committed on the property and documented by the observations
9 of a police officer, the city prosecutor or city attorney shall utilize
10 the procedures set forth in Chapter 4 (commencing with Section
11 1159) of Title 3 of Part 3 of the Code of Civil Procedure, except
12 that in cases filed under this section, the following also shall apply:

13 (1) (A) Prior to filing an action pursuant to this section, the city
14 prosecutor or city attorney shall give 30 calendar days' written
15 notice to the owner, requiring the owner to file an action for the
16 removal of the person who is in violation of the nuisance or illegal
17 purpose provisions of subdivision 4 of Section 1161 of the Code
18 of Civil Procedure with respect to an unlawful weapons or
19 ammunition purpose.

20 (B) This notice shall include sufficient documentation
21 establishing a violation of the nuisance or illegal purpose provisions
22 of subdivision 4 of Section 1161 of the Code of Civil Procedure
23 and an advisement to the owner of the assignment provision
24 contained in subparagraph (D). The notice shall be served upon
25 the owner and the tenant in accordance with subdivision (e).

26 (C) The notice to the tenant shall, in at least 14-point bold type,
27 meet the following requirements:

28 (i) The notice shall contain the following language:

29
30 “(Date)

31
32 (Name of tenant)

33 (Address of tenant)

34
35 Re: Civil Code Section 3485

36
37 Dear (name of tenant):

38
39 This letter is to inform you that an eviction action may soon be
40 filed in court against you for suspected firearms activity. According

1 to state law, Civil Code Section 3485 provides for eviction of
2 persons engaging in such conduct, as described below.

3
4 (Name of police department) records indicate that you, (name
5 of arrestee), were arrested on (date) for violations of (list violations)
6 on (address of property).

7
8 A letter has been sent to the property owner(s) advising of your
9 arrest and the requirements of state law, as well as the landlord's
10 option to assign the unlawful detainer action to the (name of city
11 attorney or prosecutor's office).

12
13 A list of legal assistance providers is provided below. Please
14 note, this list is not exclusive and is provided for your information
15 only; the (name of city attorney or prosecutor's office) does not
16 endorse or recommend any of the listed agencies.

17
18 Sincerely,

19
20 (Name of deputy city attorney or city prosecutor)
21 Deputy City (Attorney or Prosecutor)

22
23 Notice to Tenant: This notice is not a notice of eviction. You
24 should call (name of the city attorney or prosecutor pursuing the
25 action) at (telephone number) or a legal assistance provider to stop
26 the eviction action if any of the following is applicable:

- 27
28 (1) You are not the person named in this notice.
29
30 (2) The person named in the notice does not live with you.
31
32 (3) The person named in the notice has permanently moved.
33
34 (4) You do not know the person named in the notice.
35 (5) You want to request that only the person involved in the
36 nuisance be evicted, allowing the other residents to stay.
37
38 (6) You have any other legal defense or legal reason to stop the
39 eviction action. A list of legal assistance providers is attached to
40 this notice. Some provide free legal assistance if you are eligible."

1
2 (ii) The notice shall be provided to the tenant in English and,
3 as translated, in all of the languages identified in subdivision (b)
4 of Section 1632 of the Civil Code.

5 (D) The owner shall, within 30 calendar days of the mailing of
6 the written notice, either provide the city prosecutor or city attorney
7 with all relevant information pertaining to the unlawful detainer
8 case, or provide a written explanation setting forth any
9 safety-related reasons for noncompliance, and an assignment to
10 the city prosecutor or city attorney of the right to bring an unlawful
11 detainer action against the tenant.

12 (E) The assignment shall be on a form provided by the city
13 prosecutor or city attorney and may contain a provision for costs
14 of investigation, discovery, and reasonable attorney's fees, in an
15 amount not to exceed six hundred dollars (\$600).

16 (F) If the city prosecutor or city attorney accepts the assignment
17 of the right of the owner to bring the unlawful detainer action, the
18 owner shall retain all other rights and duties, including the handling
19 of the tenant's personal property, following issuance of the writ
20 of possession and its delivery to and execution by the appropriate
21 agency.

22 (2) Upon the failure of the owner to file an action pursuant to
23 this section, or to respond to the city prosecutor or city attorney
24 as provided in paragraph (1), or having filed an action, if the owner
25 fails to prosecute it diligently and in good faith, the city prosecutor
26 or city attorney may file and prosecute the action, and join the
27 owner as a defendant in the action. This action shall have
28 precedence over any similar proceeding thereafter brought by the
29 owner, or to one previously brought by the owner and not
30 prosecuted diligently and in good faith. Service of the summons
31 and complaint upon the defendant owner shall be in accordance
32 with Sections 415.10, 415.20, 415.30, 415.40, and 415.50 of the
33 Code of Civil Procedure.

34 (3) If a jury or court finds the defendant tenant guilty of unlawful
35 detainer in a case filed pursuant to paragraph (2), the city
36 prosecutor or city attorney may be awarded costs, including the
37 costs of investigation and discovery and reasonable attorney's fees.
38 These costs shall be assessed against the defendant owner, to whom
39 notice was directed pursuant to paragraph (1), and once an abstract

1 of judgment is recorded, it shall constitute a lien on the subject
2 real property.

3 (4) This section shall not prevent a local governing body from
4 adopting and enforcing laws, consistent with this section, relating
5 to weapons or ammunition abatement. If local laws duplicate or
6 supplement this section, this section shall be construed as providing
7 alternative remedies and not preempting the field.

8 (5) This section shall not prevent a tenant from receiving relief
9 against a forfeiture of a lease pursuant to Section 1179 of the Code
10 of Civil Procedure.

11 (b) In any proceeding brought under this section, the court may,
12 upon a showing of good cause, issue a partial eviction ordering
13 the removal of any person, including, but not limited to, members
14 of the tenant's household if the court finds that the person has
15 engaged in the activities described in subdivision (a). Persons
16 removed pursuant to this section may be permanently barred from
17 returning to or reentering any portion of the entire premises. The
18 court may further order as an express condition of the tenancy that
19 the remaining tenants shall not give permission to or invite any
20 person who has been removed pursuant to this subdivision to return
21 to or reenter any portion of the entire premises.

22 (c) For purposes of this section, "unlawful weapons or
23 ammunition purpose" means the illegal use, manufacture, causing
24 to be manufactured, importation, possession, possession for sale,
25 sale, furnishing, or giving away of any of the following:

26 (1) A firearm, as defined in subdivision (a) of Section 16520 of
27 the Penal Code.

28 (2) Any ammunition, as defined in subdivision (b) of Section
29 16150 of the Penal Code or in Section 16650 or 16660 of the Penal
30 Code.

31 (3) Any assault weapon, as defined in Section 30510 or 30515
32 of the Penal Code.

33 (4) Any .50 BMG rifle, as defined in Section 30530 of the Penal
34 Code.

35 (5) Any tear gas weapon, as defined in Section 17250 of the
36 Penal Code.

37 (d) Notwithstanding subdivision (b) of Section 68097.2 of the
38 Government Code, a public entity may waive all or part of the
39 costs incurred in furnishing the testimony of a peace officer in an
40 unlawful detainer action brought pursuant to this section.

(e) The notice and documentation described in paragraph (1) of subdivision (a) shall be given in writing and may be given either by personal delivery or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the owner at the address known to the public entity giving the notice, or as shown on the last equalized assessment roll, if not known. Separate notice of not less than 30 calendar days and documentation shall be provided to the tenant in accordance with this subdivision. Service by mail shall be deemed to be completed at the time of deposit in the United States mail. Proof of giving the notice may be made by a declaration signed under penalty of perjury by any employee of the public entity which shows service in conformity with this section.

(f) This section shall apply to the following courts:

(1) In the County of Los Angeles, any court having jurisdiction over unlawful detainer cases involving real property situated in the City of Los Angeles or the City of Long Beach.

(2) In the County of San Diego, any court having jurisdiction over unlawful detainer cases involving real property situated in the City of San Diego.

(3) In the County of Alameda, any court with jurisdiction over unlawful detainer cases involving real property situated in the City of Oakland.

(4) In the County of Sacramento, any court with jurisdiction over unlawful detainer cases involving real property situated in the City of Sacramento.

(g) (1) The city attorney and city prosecutor of each participating jurisdiction shall provide to the California Research Bureau the following information:

(A) The number of notices provided pursuant to paragraph (1) of subdivision (a).

(B) For each notice provided pursuant to paragraph (1) of subdivision (a), the following information:

(i) The name and age, as provided by the landlord, of each person residing at the noticed address.

(ii) Whether the person has previously received a notice pursuant to this section from the reporting city attorney or city prosecutor, and if so, whether the tenant vacated or was evicted as a result.

1 (C) For the tenant receiving the notice, whether the tenant has
2 previously been arrested (other than an arrest that is the basis of
3 this notice) for any of the offenses specified in subdivision (c).

4 (D) The number of cases filed by an owner, upon notice.

5 (E) The number of assignments executed by owners to the city
6 attorney or city prosecutor.

7 (F) The number of three-day, 30-day, or 60-day notices issued
8 by the city attorney or city prosecutor.

9 (G) The number of cases filed by the city attorney or city
10 prosecutor.

11 (H) The number of times that an owner is joined as a defendant
12 pursuant to this section.

13 (I) For the subtotal of cases filed by an owner, the city attorney,
14 or the city prosecutor, the following information:

15 (i) The number of judgments ordering an eviction or partial
16 eviction, and specifying whether each was a default judgment,
17 stipulated judgment, or judgment following trial.

18 (ii) The number of cases, listed by separate categories, in which
19 the case was withdrawn or in which the tenant prevailed.

20 (iii) The number of other dispositions, and specifying the
21 disposition.

22 (iv) The number of defendants represented by counsel.

23 (v) Whether the case was a trial by the court or a trial by a jury.

24 (vi) Whether an appeal was taken, and, if so, the result of the
25 appeal.

26 (vii) The number of cases in which partial eviction was
27 requested, and the number of cases in which the court ordered a
28 partial eviction.

29 (J) For the subtotal of cases in which a notice was provided
30 pursuant to subdivision (a), but no case was filed, the following
31 information:

32 (i) The number of instances in which a tenant voluntarily vacated
33 subsequent to receiving the notice.

34 (ii) The number of instances in which a tenant vacated a unit
35 prior to the providing of the notice.

36 (iii) The number of cases in which the notice provided pursuant
37 to subdivision (a) was erroneously sent to the tenant. This shall
38 include a list of the reasons, if known, for the erroneously sent
39 notice, such as reliance on information on the suspected violator's

1 name or address that was incorrect, a clerical error, or any other
2 reason.

3 (iv) The number of other resolutions, and specifying the type
4 of resolution.

5 (K) For each case in which a notice was issued and the tenants
6 either vacated the premises before a judgment in the unlawful
7 detainer action or were evicted, the street address, city, and ZIP
8 Code of residence where the tenants relocated, to the extent known.

9 (2) (A) Information compiled pursuant to this section shall be
10 reported annually to the California Research Bureau on or before
11 January 20.

12 (B) The California Research Bureau shall thereafter submit a
13 brief report to the Senate and Assembly Committees on Judiciary
14 once on or before March 20, 2016, and once on or before March
15 20, 2018, summarizing the information collected pursuant to this
16 section and evaluating the merits of the programs established by
17 this section. The report shall be submitted in compliance with
18 Section 9795 of the Government Code.

19 (3) Personally identifiable information submitted to the
20 California Research Bureau pursuant to this section shall be
21 confidential and shall not be publicly disclosed.

22 SEC. 2. The Legislature finds and declares that a special law
23 is necessary and that a general law cannot be made applicable
24 within the meaning of Section 16 of Article IV of the California
25 Constitution because of the particular needs of the counties
26 identified in this act and their unique experience with the law as
27 it previously read.

28 SEC. 3. If the Commission on State Mandates determines that
29 this act contains costs mandated by the state, reimbursement to
30 local agencies and school districts for those costs shall be made
31 pursuant to Part 7 (commencing with Section 17500) of Division
32 4 of Title 2 of the Government Code.

33 SEC. 4. This act is an urgency statute necessary for the
34 immediate preservation of the public peace, health, or safety within
35 the meaning of Article IV of the Constitution and shall go into
36 immediate effect. The facts constituting the necessity are:

37 In order that the counties specified in Section 1 of this act will
38 have all the tools they need for the protection of public safety at

- 1 the earliest time, it is necessary that this bill go in to effect
- 2 immediately.

O